

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

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|----------------------------------|---|-----------------|
| ROBERT T. STOOKSBURY, JR., |) | |
| |) | |
| Plaintiff, |) | |
| |) | No. 3:09-CV-498 |
| |) | (VARLAN/GUYTON) |
| v. |) | |
| |) | |
| MICHAEL L. ROSS, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and Standing Order 13-02.

Now before the Court is the Receiver's Response to Supplemental Notice of American Harper Corporation of Providing Accounting Records and Access to the Receiver and the Receiver's Motion to Compel [Doc. 961], (hereinafter "Motion to Compel"). In the Motion to Compel, the Receiver moves the Court to order Mr. Ted Doukas, American Harper Corporation, Athena of S.C., LLC, their related entities, agents and representatives (collectively referred to as "Athena") to provide documents that the Receiver alleges are being withheld from him. Further, the Receiver moves the Court to order Athena to account for their continuing use, operation and/or control exercised over receivership assets previously identified with the Receiver's Quarterly Reports.

In support of this request, the Receiver submits that he has, on several occasions, requested documentation from Athena, but he has not received all of the documents requested. The Receiver has requested that Athena and its related entities account for the continuing use, operation and/or control exercised over receivership assets as identified within the Receiver's

Quarterly Reports. In addition, through counsel, Through the assistance of counsel, the Receiver requested Ted Doukas, Athena of S.C., LLC, American Harper Corporation, their related entities, agents and representatives to produce documents that relate to the various transactions, individuals and entities identified within the Quarterly Reports as referenced within the exchange of correspondence marked as Composite Exhibit 17 in connection with the hearing held on May 7, 2013 involving the Petition to Implement Summary Proceedings.

The Receiver states that, although Athena has produced some documents via Mr. Doukas and Mr. Baker, a number of relevant documents have not been produced. The Receiver, therefore, moves the Court to order Athena to produce:

1. Documents and accounting records for the Riverview Apartments owned by Vonore Properties, LLC;
2. Documents and accounting records for the Vonore Apartments allegedly transferred by Rarity Management Company, LLC to Likos of Tennessee Corp. by Warranty Deed dated December 29, 2011;
3. Documents and accounting records for the West Palm Beach condominium owned by Michael L. Ross and the sale of the cabana;
4. Documents and accounting records for the Riverview Apartments, LLC; and
5. Documents and accounting records for any additional property identified within the Receiver's schedule of assets that form a part of the receivership estate over which Athena has exercised any control since April 1, 2012 through the present.

The Receiver has submitted an Affidavit attesting to the relevance of these documents and the efforts that the Receiver and his counsel have made to obtain these documents. [Doc. 961-1].

The Motion to Compel was filed on June 18, 2013. No party has filed a response in opposition to the Motion to Compel, and the time for doing so has expired. E.D. Tenn. L.R. 7.1; Fed. R. Civ. P. 6(d), 5(b)(2)(E). “Failure to respond to a motion may be deemed a waiver of any opposition to the relief sought.” E.D. Tenn. L.R. 7.2. The Court may grant the relief requested on this basis alone.

On June 30, 2013, American Harper and Athena, however, filed a notice stating that they have “provided all or substantially all documents requested to be produced by the Receiver.” [Doc. 968 at 2]. The notice states that all documents “with the exception of Likos documents” have been provided. [Id.]. The notice does not detail the categories of documents produced. The Court is, therefore, unable to evaluate the extent to which Athena and American Harper have complied with the Receiver’s document requests. The Court finds that the notice does not provide a sufficient basis on which the Court could find the Motion to Compel to be moot.

Accordingly, the Court finds that the Motion to Compel [**Doc. 961**] is well-taken, and it is **GRANTED**. To the extent they have not already done so, Mr. Ted Doukas, American Harper Corporation, Athena of S.C., LLC, their related entities, agents and representatives are **ORDERED** to produce any and all documents and records relating to: (1) the Riverview Apartments owned by Vonore Properties, LLC; (2) Vonore Apartments allegedly transferred by Rarity Management Company, LLC to Likos of Tennessee Corp. by Warranty Deed dated December 29, 2011; (3) West Palm Beach condominium owned by Michael L. Ross and the sale of the cabana; (4) the Riverview Apartments, LLC; and (5) any additional property identified

within the Receiver's schedule of assets that form a part of the receivership estate over which Athena has exercised any control since April 1, 2012 through the present.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge